TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 810.

FOX FILM CORPORATION, PETITIONER,

vs.

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 24, 1922.

CERTIORARI AND RETURN FILED MAY 11, 1922.

(28,780)

(28,780)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 310.

FOX FILM CORPORATION, PETITIONER,

vs.

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 16, 1922.

1 *Bill of Complaint.*

United States District Court, Eastern District of New York.

FOX FILM CORPORATION, Complainant,

against

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, CORSE PAYTON, CORSE PAYTON STOCK CO., and JOHN KAISER, Respondents.

To the Honorable the Judges of the District Court of the United States for the Eastern District of New York:

The complainant complaining of the defendants, alleges:

First. That at all the times hereinafter mentioned the complainant was and still is a corporation duly organized and existing under and by virtue of the Laws of the State of New York, and having its principal place of business in the Borough of Manhattan, City
2 of New York, in the Southern District of New York, and is a citizen of the United States.

Second. Upon information and belief, that at all the times hereinafter mentioned the defendants Joseph Klein, Joseph Morris, Louis Baret, Corse Payton and Corse Payton Stock Co. were the lessees of and managed, controlled and operated a certain place of public entertainment or theatre known as "The Amphion Theatre" located at Bedford Avenue and South Ninth Street, in the Borough of Brooklyn, City of New York, in the Eastern District of New York, and, on information and belief, that each of said defendants are residents of the Borough of Brooklyn, City of New York and County of Kings.

Third. On information and belief, that at all the times hereinafter mentioned the defendant Corse Payton was engaged in the production of plays and conducted and gave dramatic and theatrical performances at the said Amphion Theatre during all the times hereinafter mentioned under the name and style of Corse Payton Stock Co.

Fourth. On information and belief, that at all the times hereinafter mentioned the defendant Frederick M. Knowles was and still is a resident of the County of Queens, in the City and State of New York.

Fifth. On information and belief, that prior to February 21st, 1873 one Will Carleton, a citizen of the United States, in-
3 vented, originated, created and wrote a series or collection of poems entitled "Farm Ballads," which contained two certain poems entitled "Over the Hills to the Poor House" and "Over the Hills from the Poor House" written by the same poet.

Sixth. On information and belief, that prior to the 21st day of February, 1873, the said poet and author, Will Carleton, assigned said poems and literary properties "Farm Balads" which included "Over the Hills to the Poor House" and "Over the Hills from the Poor House," including all rights therein and the right to secure copyright therein, to Harper and Brother, a publisher of literary works and poems.

Seventh. Upon information and belief, that thereafter and on or about February 21st, 1873, the said Harper and Brother duly copyrighted said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" by publishing the same in a collection of other poems by the same author entitled "Farm Ballads" with the following notice of copyright on the first page of said work "Farm Ballads," to wit: "Copyrighted by Harper and Brother February 21st, 1873."

Eighth. On information and belief, that after the publication of said collection of poems entitled "Farm Ballads" containing the aforesaid poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" with such notice of copyright
4 as aforesaid. the said Harper and Brother promptly on the 21st day of February, 1873 deposited in the Office of the Register of Copyrights, Washington, District of Columbia, two complete copies of the best edition of the collection of poems entitled "Farm Ballads" containing the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" then published, accompanied by a claim of copyright, and paid to the said Register of Copyrights the fee required by law for such registration, and the said collection of poems entitled "Farm Ballads" including said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" was duly registered by said Register of Copyrights.

Ninth. On information and belief. that thereafter and until on or about February 21st, 1901 Harper and Brother, the proprietor of the said "Farm Ballads" published various editions of the said collection of poems entitled "Farm Ballads," which always contained the aforesaid poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House," and upon each copy of such editions of "Farm Ballads" so published there was inscribed on the first page thereof the copyright notice required by law in the following words: "Copyrighted by Harper and Brother February 21st, 1873."

Tenth. Upon information and belief, that within one
5 year before the expiration of the copyright aforesaid duly obtained by Harper and Brother of the collection of poems entitled "Farm Ballads," which included the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" and on or about the 7th day of January, 1901 the said author Will Carleton, in accordance with the copyright law, duly filed an application with the Register of Copyrights of the United States for the renewal of said copyright, and on or about the 7th day of January,

1901 the said copyright of the collection of poems entitled "Farm Ballads" including the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" was duly renewed from February 21st, 1901 for the period of 14 years to and including on or about February 21st, 1915.

Eleventh. Upon information and belief, that from on or about February 21st, 1901 to on or about February 21st, 1915, the said collection of poems "Farm Ballads" including the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" were published in several editions, and that there was inscribed on the first page of each work and edition the following words: "Copyright 1873 by Harper and Brother Copyright 1901 by Will Carleton."

Twelfth. Upon information and belief, that the said author of the poems "Farm Ballads," Will Carleton, on or about the 18th day of December, 1912, departed this life leaving a Last Will and Testament in which he bequeathed all his property as sole legatee to one Norman E. Goodrich, a resident at that time of
6 the Borough of Brooklyn, City of New York, County of Kings and State of New York, and also appointed therein the said Norman E. Goodrich as sole executor. That the said Will of the said Will Carleton was duly probated in the Surrogates Court of the County of Kings, State of New York, on the 21st day of March, 1913, and that on or about said date Letters Testamentary were duly issued out of the said Court to the said Norman E. Goodrich as executor, and that the said Norman E. Goodrich duly qualified as such executor and duly acted as such.

Thirteenth. Upon information and belief, that within one year before the expiration of the renewal of the copyright duly obtained by the said Will Carleton, as set forth in paragraph "Tenth" hereof, the said Norman E. Goodrich, as executor and sole legatee of the estate of said Will Carleton, on or about January 21st, 1915 duly filed an application for the renewal of the said copyright with the Register of Copyrights, in accordance with the Copyright Law of the United States, and on or about the 21st day of January, 1915 the said copyright of the collection of poems entitled "Farm Ballads" including the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" was duly renewed from February 21st, 1915 for the period of 14 years to and including on or about February 21st, 1929.

7 Fourteenth. On information and belief, that thereafter and at all the times hereinafter mentioned the said collection of poems entitled "Farm Ballads" including the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" were published in several editions, and that there was inscribed on the first page of each work and edition the following words:

"Copyright 1873 by Harper and Brother.
Copyright 1901 by Will Carleton.
Copyrighted 1915 by Norman E. Goodrich."

Fifteenth. On information and belief, that the said Norman E. Goodrich departed this life on or about the 27th day of July, 1915 leaving a last will and testament in which he bequeathed all his property as sole legatee to one Alice L. Goodrich, widow of the deceased, a resident at that time of the Borough of Brooklyn, City of New York, County of Kings and State of New York, and also appointed therein the said Alice L. Goodrich as sole executrix. That the said Will of the said Norman E. Goodrich was duly probated in the Surrogates Court of the County of Kings, State of New York, on the 27th day of September, 1915, and that on or about the said date Letters Testamentary were duly issued out of the said Court to the said Alice L. Goodrich as executrix, and that the said Alice L. Goodrich duly qualified as such executrix and duly acted as such.

8 Sixteenth. That on or about the 26th day of October, 1920, the said Alice L. Goodrich, as executrix and sole legatee of the Estate of Norman E. Goodrich, deceased, for a valuable consideration, duly assigned to the plaintiff in writing the sole dramatic copyright of the said poems entitled "Over the Hills to the Poor House" and "Over the Hills from the Poor House" and gave to plaintiff the exclusive right to dramatize the same for production on the stage throughout the world.

Seventh-. That the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" are and were capable of being dramatized and of dramatic representation, and the characters depicted in the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House," by the words, expression and action as told in said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" unveil and tell a story and make and made it representation on the stage practical and effective.

Eighteenth. Upon information and belief, that prior to November 1st, 1920 the defendant Frederick M. Knowles, without the knowledge or consent of the plaintiff, or of the plaintiff's predecessors in title of the dramatic copyright of the aforesaid poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House," and in infringement of such dramatic copyright
9 and with full knowledge of the plaintiff's and its predecessors' rights in said poems and of such dramatic copyright, wrote a drama entitled "Over the Hills to the Poor House," which drama written by said defendant Frederick M. Knowles, with certain elaborations and modifications, exhibits the characters, scenes, incidents, situations and climaxes as contained in the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" and tells the story as told in the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House."

Nineteenth. On information and belief, that thereafter on or about November 1st, 1920, the defendants Joseph Klein, Joseph Morris, Louis Baret, Corse Payton, Corse Payton Stock Co. and John Kaiser, and at other times subsequent thereto, and without the

knowledge or consent of the plaintiff or its predecessors in title and in infringement of the dramatic copyright of the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" and with full knowledge of the plaintiff's rights in such work and of such copyright gave public performances and exhibitions for profit at the Amphion Theatre, in the Borough of Brooklyn, City of New York, of a drama entitled "Over the Hills to the Poor House" based upon the dramatic version written by the defendant Frederick M. Knowles as aforesaid, with the permission, assistance and participation of the defendant Knowles, and such public per-
10 formances given by said defendants portrayed the characters, scenes, incidents, situations and climaxes as contained in the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" and told the story as told by the said poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House," and the said defendants threatened to continue such infringing performances.

Twentieth. On information and belief, that in connection with the performances and exhibitions of the aforesaid drama "Over the Hills to the Poor House" given by said defendants, the said defendants caused to be issued many posters, handbills and circulars advertising the performances of the aforesaid drama "Over the Hills to the Poor House," and caused to be issued programs given to its patrons at said performances in said Amphion Theatre during each of said performances the following:

"The Corse Payton Stock Co. presents 'Over the Hills to the Poor House' Under the Direction of John Eiser."

Twenty-first. Upon information and belief, that the said public performances of the aforesaid drama "Over the Hills to the Poor House" by the said defendants at the said Amphion Theatre in the Borough of Brooklyn, City of New York, were given under their direction and for the entertainment of the patrons patronizing said theatre, and that the defendants have realized large profits
11 and income from such infringing performances, and the said defendants have never been authorized by the plaintiff or its predecessors in title to tell the story of the poems "Over the Hills to the Poor House" and "Over the Hills from the Poor House" in a dramatic performance.

Twenty-second. That prior to the commencement of this suit your complainant duly notified the defendants of such infringement and requested said defendants to discontinue the same, but said defendants have knowingly and willfully refused to discontinue such infringing performances and knowingly and willfully continued to conduct said infringing performances, and, on information and belief, will continue the same in violation of the dramatic copyright owned by the plaintiff as aforesaid.

Twenty-third. That unless the defendants are restrained from continuing the said wrongful act above set forth the said defendant's wrongful and unlawful acts will irreparably injure the complainant and will damage it to such an extent that no damages recoverable by an action at law would afford it adequate relief.

Wherefore, complainant prays

(1) That the defendants and each of them, and their attorneys, agents and servants, and any and all persons acting under their direction, control permission or license, be enjoined and restrained during the pendency of this action and perpetually, from
12 publicly performing the drama "Over the Hills to the Poor House," and from causing or permitting the said drama to be publicly performed in the said defendants' premises, or in any place owned, controlled or conducted by said defendants and from aiding or abetting the public performance of said drama "Over the Hills to the Poor House" in any such place or otherwise.

(2) That the defendants and each of them render a full and true account of all moneys or profits derived by them, or either of them, from or by reason of the performance of the said drama "Over the Hills to the Poor House."

(3) That the complainant recover from the defendants the sum of Twenty-five thousand ($25,000) Dollars as and for its damages, and to that end the damages sustained by complainant by reason of such infringement be assessed and ascertained.

(4) That the defendants pay the costs of this action and that a reasonable attorneys' fee be allowed to the plaintiff.

(5) That the complainant have such other and further relief as may be just and equitable.

SAUL E. ROGERS,
Solicitor for the Complainant.

Office & P. O. Address: 55th St. & 10th Ave., Borough of Manhattan, New York City.

13 STATE OF NEW YORK,
County of New York, ss:

Jack G. Leo, being duly sworn, deposes and says: That he is the Vice President of the Fox Film Corporation, the complainant in the within action; that he has read the foregoing Bill of Comp-aint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

That the reason this verification is made by deponent and not by complainant is because complainant is a corporation and deponent an officer thereof, to wit: its Vice President.

JACK G. LEO.

Sworn to before me this 11th day of November, 1920.

——— ———.

14 *Answer of Defendant Frederick M. Knowles.*

United States District Court, Eastern District of New York.

FOX FILM CORPORATION, Plaintiff,

vs.

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, CORSE PAYTON, CORSE PAYTON STOCK CO., and JOHN KAISER, Defendants.

The defendant, Frederick M. Knowles, for his answer to the bill of complaint herein respectfully shows and alleges:

First. He admits the allegations contained in paragraphs marked "First" and "Fourth" of said bill of complaint.

Second. He has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs marked "Second," "Third," "Fifth," "Sixth," "Seventh," "Eighth," "Ninth," "Tenth," "Eleventh," "Twelfth," "Thirteenth,"
15 "Fourteenth," "Fifteenth," "Sixteenth," "Twentieth," "Twenty-third" of said bill of complaint, and therefore denies the same.

Third. He denies each and every allegation contained in paragraphs marked, "Seventeenth," "Eighteenth," "Nineteenth," "Twenty-first," and "Twenty-second" of said bill of complaint.

Further answering said bill of complaint, defendant alleges:

Fourth. That about fourteen years ago, at the special instance and request of Corse Payton, he made certain elaborations to and upon a play then known as "Over the Hills to the Poorhouse."

Fifth. That when said elaborations were so made, different scenes of action, and different climaxes were introduced.

Further answering said bill of complaint, defendant alleges:

Sixth. That if a production was given by the defendants Corse Payton or Corse Payton Stock Co. or any of the defendant- herein, same was given without the knowledge and consent and against the will of this defendant, and this defendant did not authorize or give his permission to the defendants Corse Payton or Corse Payton Stock Co., or any of them, to print upon any programs any state-
16 ment that the play or production produced by them was adapted from Will Carleton's celebrated poem by Frederick M. Knowles, and that this defendant did not realize any profits by

reason of said production, and had no arrangements with any of the defendants, whereby he was to receive any moneys whatever by reason of this production.

Wherefore, defendant having duly answered all the matters set forth in the bill of complaint, prays this Honorable Court to enter its decree for the defendant by dismissing the bill of complaint with reasonable costs and charges in the matter wrongfully sustained.

Dated, New York, December 15th, 1920.

FREDERICK M. KNOWLES,
BICK, GODNICK & FREEDMAN,
Solicitors for Defendant Knowles.

17 *Verification.*

STATE OF NEW YORK,
County of Kings,
Borough of Brooklyn, ss:

Fred. M. Knowles, being duly sworn, deposes and says that he is one of the defendants in the within action; that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

FREDERICK M. KNOWLES.

Sworn to before me this 15th day of December, 1920.
ETHAN R. KATZ,
Notary Public, Kings County.

18 *Answers of Joseph Klein, Joseph Morris, and Louis Baret.*

United States District Court, Eastern District of New York.

FOX FILM CORPORATION, Complainant,

vs.

FRED. M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, Corse Payton, Corse Payton Stock Co., and John Kaiser, Defendants.

The defendants Joseph Klein, Joseph Morris, and Louis Baret, for their answer to the bill of complaint of the plaintiff herein, respectfully show and allege:

First. They admit the allegations contained in paragraph marked "First."

Second. They admit that they are the lessees of, and managed, controlled and operated a certain place of public amusement or the-

atre known as the Amphion Theatre, located at Bedford Avenue and South 9th Street, in the Borough of Brooklyn, City of New York, in the Eastern District of New York, and that they are residents of the Borough of Brooklyn, City of New York, and County of New York, but deny each and every other allegation contained in paragraph "Second" of the complaint.

Third. They admit that the Corse Payton Stock Co. gave a dramatic and theatrical performance at the said Amphion Theatre, but deny each and every other allegation contained in paragraph marked "Third" of the bill of complaint.

Fourth. They have no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs marked "Fourth", "Fifth", "Sixth", "Seventh", "Eighth", "Ninth", "Tenth", "Eleventh", "Twelfth", "Thirteenth", "Fourteenth", "Fifteenth" and "Sixteenth" of the bill of complaint.

Fifth. That they deny the allegations contained in paragraphs marked "Seventeenth", "Eighteenth", "Nineteenth", "Twenty-first", "Twenty-second", and "Twenty-third" of said bill of complaint.

Sixth. They deny each and every allegation contained in paragraph marked "Twentieth", except they admit that they issued programs given to its patrons at said performance in said Amphion Theatre the following:

"The Corse Payton Stock — Presents, 'Over the Hills to the Poor House' under the direction of Joseph Klein."

Wherefore, defendants having duly answered all the matters set forth in the bill of complaint prays this Honorable Court to enter its decree for the defendants by dismissing the bill of complaint with reasonable costs and charges in the above matters wrongfully sustained.

Dated, New York, December 10th, 1920.

JOSEPH KLEIN,
LOUIS BARET.
JOSEPH MORRIS.

LOUIS CHARLES WILLS,
Solicitor for Defendants.

BICK, GODNICK & FREEDMAN,
Of Counsel.

215 Montague Street, Brooklyn, N. Y.

21 *Verification.*

STATE OF NEW YORK,
County of Kings,
Borough of Brooklyn, ss:

Joseph Klein, Joseph Morris, Louis Baret, being severally sworn, depose and say that they are three of the defendants in the within action; that they have read the foregoing answer and know the contents thereof; that the same is true to their own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters they believe it to be true.

JOSEPH KLEIN.
LOUIS BARET.
JOSEPH MORRIS.

Sworn to before me this 10th day of December, 1920.

FRED KAISER,
Notary Public, Kings County, N. Y.

22 *Answer of Defendant- Corse Payton and Corse Payton Stock Company.*

United States District Court, Eastern District of New York.

FOX FILM CORPORATION, Plaintiff,

against

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, Corse Payton, Corse Payton Stock Co., and John Kaiser, Defendants.

The defendants, Corse Payton, and Corse Payton Stock Company, answering the complaint of the plaintiff.

First. Denies each and every allegation contained in paragraphs marked "Second" and "Third", except that the Corse Payton Stock Company conducts theatrical productions at the Amphion Theatre, in the Borough of Brooklyn, in the County of Kings.

Second. That the defendants, Corse Payton and Corse Payton Stock Co., have no knowledge or information thereof sufficient to form a belief as to the allegations contained in paragraphs marked "Fifth", "Sixth", "Seventh", "Eighth", "Ninth", "Tenth",
23 "Eleventh", "Thirteenth", "Fourteenth", and "Sixteenth", except that the matters alleged to be of record in the various offices of the United States and the State of New York, there appears to be a similarity of names, as alleged in the said paragraphs of the complaint, and as to the identity of the persons, the defendants have no knowledge or information sufficient to form a belief thereof.

Third. Denies each and every allegation contained in paragraphs marked "Seventeenth", "Eighteenth" and "Nineteenth".

Fourth. Denies each and every allegation contained in paragraph marked "Twentieth", except that the said hand bills were distributed by order of the defendants.

Fifth. Denies each and every allegation contained in paragraphs marked "Twenty-first", Twenty-second" and "Twenty-third".

Wherefore, defendants, Corse Payton and Corse Payton Stock Co., demand judgment, dismissing the complaint.

JEROME C. JACKSON,
Solicitor and Attorney for Defendants
Corse Payton and Corse Payton Stock Co.

Office & P. O. Address, 1476 Broadway, Borough of Manhattan, City of New York.

24 STATE OF NEW YORK,
County of New York,
City of New York, ss:

Corse Payton, being duly sworn, deposes and says that he is one of the defendants herein; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

The reason why this verification is made by deponent is that he is an officer, to wit, the — of the ——, which is a corporation, and is familiar with the facts and circumstances herein.

And the sources of deponent's information and the grounds of his belief as to all matters not therein stated upon — knowledge are as follows: ——.

CORSE PAYTON.

Sworn to before me this 22nd day of December, 1920.

[SEAL.] WILLIAM MEYERS,
Notary Public, N. Y. C.

25 *Notice of Motion by Defendant Frederick M. Knowles to Dismiss the Bill of Complaint.*

United States District Court, Eastern District of New York.

FOX FILM CORPORATION, Complainant,

vs.

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS Baret, Corse Payton, Corse Payton Stock Co., and John Kaiser, Defendants.

SIR:

Please take notice, that upon the bill of complaint herein, I shall move this Court at a Stated Term thereof to be held for the hearing of Motions at the Post Office Building in the Borough of Brooklyn, City of New York on the 6th day of April, 1921, at 2 P. M. or as soon thereafter as counsel can be heard for an order dismissing the bill of complaint herein on the ground that there are not
26 sufficient facts contained therein to make out a cause of action and for such other and further relief as may be just and proper in the premises.

Dated, March 30th, 1921.

Yours etc.,

BICK, GODNISK & FREEDMAN,
Sols. for Deft. Knowles.

Office & P. O. Address, No. 215 Montague St., Borough of Brooklyn, City of New York.

To Saul E. Rogers, Sol. for complainant, 55th Street and 10th Avenue, New York City.

27 *Notice of Motion of Defendants Klein, Morris, and Baret to Dismiss the Bill of Complaint.*

United States District Court, Eastern District of New York.

FOX FILM CORPORATION, Complainant,

vs.

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS Baret, Corse Payton, Corse Payton Stock Co., and John Kaiser, Defendants.

SIR:

Please take notice, that upon the bill of complaint herein, I shall move this Court at a Stated Term thereof to be held for the hearing of Motions at the Post Office Building in the Borough of Brooklyn,

City of New York on the 6th day of April, 1921, at 2 P. M. or as soon thereafter as counsel can be heard for an order dismissing the bill of complaint herein on the ground that there are not
28 sufficient facts contained therein to make out a cause of action and for such other and further relief as may be just and proper in the premises.

Dated, March 30th, 1921.

Yours etc.,

LOUIS C. WILLS,
Sol. for Defts. Klein, Morris and Baret.

Office & P. O. Address, No. 32 Court Street, Borough of Brooklyn, City of New York.

To Saul E. Rogers, Sol. for complainant, 55th Street and 10th Avenue, New York City.

29 *Opinion of Hon. Thomas I. Chatfield, D. J.*

United States District Court, Eastern District of New York.

THE FOX FILM CORPORATION

against

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, CORSE PAYTON, CORSE PAYTON STOCK CO., and JOHN KAISER.

June 28, 1921.

Saul E. Rogers, solicitor for complainant; Saul E. Rogers and Percy Heiliger, of counsel;

Bick, Godnick & Freedman, solicitors for defendants; Fred Francis Weiss and Louis R. Bick, of counsel.

CHATFIELD, *J.:*

The defendants move for judgment under Equity Rule 29 dismissing a bill of complaint charging infringement of copyright. This application is exactly similar to one made in the case of the Fox Film Corporation against Frederick M. Knowles and others,
30 in the Southern District of New York, in which the bill was dismissed upon a decision filed May 18, 1921, by Knox, District Judge. As the principles of law involved have been recently passed upon in the case of Danks v. Gordon, decided by the Circuit Court of Appeals, upon the 2nd day of March 1921, and the case of Silverman v. Sunrise Pictures Corporation decided by the Circuit Court of Appeals on the 11th day of May, 1921, it is unnecessary to repeat the various propositions discussed and determined in those decisions.

But three points are presented on this application. In the first place, it is suggested that the plaintiff has failed to allege a cause of

action because it has neglected to stated specifically that an executor recording a copyright and claiming the copyright as legatee, took such action in the absence of any living widow, children or next of kin of the author.

If we were considering the matter of jurisdiction in the District Court, as was the case in Danks v. Gordon, supra, allegations of fact rather than conclusions of law would be necessary so as to make out prima facie grounds for the exercise of jurisdiction by this court. But in this case jurisdiction is undoubted. An allegation that action was had by an executor plainly imports a will, thus excluding next of kin under the statute. An allegation that the copyright was duly obtained, when admitted for the purpose of this motion, makes it unnecessary to specifically allege the non-existence of other persons entitled.

31 In order to avoid confusion, as was held by Judge Knox in the case in the Southern District, amendment, could be had, but is unnecessary as the present motion cannot be supported on any such ground.

The real point in the case is the question whether Will Carleton, the author of the copyrighted poems, who had assigned his interest, including authority to copyright, to Harper & Brothers, many years previous, could, by will, at the time of his decease in 1913, transfer to his executor or legatee under the will, the capacity to obtain, under the provisions of the copyright statute, any interest by filing a notice of renewal on Jany. 21, 1915, just one month prior to the expiration of the previous copyright.

The cases cited and also Paige v. Banks, 80 U. S. 608 (decided with respect to the language of the previous statute of May 31, 1790) established the proposition that no assignment of copyright or of right to copyright, can anticipate or assign away the right of renewal which is conferred upon the author, widow, children, next of kin, or executor by the Statute. In other words, the property right obtained by the filing of a copyright, is the power to prevent copying or use of the material during the period provided for by statute. Neither the author nor his assignee possess any rights or powers which can be transferred in such a way as to run beyond that period. When the renewal of the copyright is sought, a new property right is created and a new power to prevent copying given to the persons entitled, not in any way dependent upon the previous

32 bestowal of a similar authority.

When there are no widow, children or next of kin and the right of renewal vests in an executor, the right must become property which is a part of the estate. Upon the happening of the condition subsequent, the estate thus gains the renewal of the copyright, and the person then entitled to receive the estate or that part of it which includes the renewed copyright, will receive the benefit at the hands of the executor. No formal transfer by the executor is necessary, as evidently the executor can hold this property right only subject to accounting for and turning over the estate.

A third objection is raised in the present case because notice of copyright, after renewal by the executor was printed as "Copyright

1915, by Norman E. Goodrich." Section 18 of the Copyright Law of 1909, which was in force at that time did not require that the name of the person entitled to file the copyright should be printed, and this notice would seem to be sufficient under the statutes, if on Janv. 21, 1915, the filing of a renewal of copyright by the executor of Will Carleton, the author of the poems in question, secured the copyright to the estate. The executor was also sole legatee, and if he obtained the rights to this renewal, these rights would upon his decease pass under his own will. The plaintiff in this case claims these rights by assignment from this legatee.

33 The conclusion of the court in the case of Fox Film Corporation v. Knowles and others, in the Southern District, that the executor and legatee of Will Carleton deceased, obtained no valid copyright by filing the notice of renewal, is based upon the statement in the Silverman case, supra, as follows: "We construe the section as vesting the right in, or imposing the duty on executors, only when the power of privilege of obtaining renewal was existing in the testator-author at the moment of decease."

It is apparent that in 1915, the decedent, Will Carleton, had no power to make any disposition with respect to the copyright then in existence. But the point which must now be decided is whether the right to renew the copyright was lost to his estate, and passed to his next of kin directly, if the decedent left him surviving no widow or children, who were living during the last year before the expiration of the earlier copyright, when the decedent's death occurred before the beginning of this year.

In Danks v. Gordon, supra, and Silverman v. Sunrise Pictures Corporation, supra, it was held that an administrator, as such, obtained no right of renewal of a copyright. It evidently follows that next of kin may take directly, but that their rights do not pass through the hands of the administrator. That is, that their rights are not a part of the estate of the decedent. If the right of renewal is not a part of the estate of the decedent, then it would not pass by will. The only purpose of including the word "executor" in the statute must

34 then have been to cover the possible situation presented by the death of an author before renewing a copyright but within the year during which a copyright might be renewed, where no widow or children were living at the time, and where the decedent, by living until his power of renewal had accrued, obtained thereby a property right which was recognizable as part of his estate, as soon as the privilege was exercised.

On this view of the statute as interpreted by the cases, the author, Will Carleton, at his decease had no rights which he could dispose of in the old copyright which he had assigned. He had no rights which he could dispose of in the power of renewal, as the time when such rights could be conferred by renewal had not arrived. The power to renewal apparently vested in his next of kin and was not exercised, and no valid copyright for the renewal period now exists.

The motion must therefore be granted and the complaint dismissed.

35 *Affidavit of Fred Francis Weiss.*

United States District Court, Eastern District of New York.

FOX FILM CORPORATION, Plaintiff,

vs.

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, CORSE PAYTON, CORSE PAYTON STOCK CO., and JOHN KISER, Defendants.

STATE OF NEW YORK,
County of Kings, ss:

Fred Francis Weiss, being duly sworn, deposes and says: That he is associated with the firm of Bick, Godnick & Freedman, solicitors for the defendant Frederick M. Knowles, and of counsel for the defendants, Joseph Klein, Joseph Morris and Louis Baret, who appeared in this action by Louis Charles Wills, Esq., their attorney.

This action was brought by the plaintiff, Fox Film Corporation, to restrain the defendants from infringing upon their alleged
36 copyright to the film known as "Over the Hills to the Poorhouse," which was based upon Will Carleton's poems known as "Over the Hills to the Poorhouse" and "Over the Hills from the Poorhouse," and also to recover damages in the sum of Twenty-five thousand ($25,000) Dollars, together with the costs, and a reasonable attorney's fee.

The complaint was served upon the defendants on or about the 13th day of November, 1920. The defendant Joseph Klein, Joseph Morris and Louis Baret filed a notice of appearance by Louis Charles Wills on or about the 3rd day of December, 1920.

Thereafter, Messrs. Bick, Godnick & Freedman, were retained by the defendants aforementioned, as counsel. On the 11th day of December, 1920, the defendant Frederick M. Knowles, appeared by Messrs. Bick, Godnick & Freedman. It required a careful examination of the complaint to interpose a proper answer thereto, which necessitated asking for an extension of time to answer, which was granted to the 13th day of December, 1920.

On or about the 10th day of December, 1920, issue was joined by the services of answers on behalf of the defendants above mentioned.

That this case then was added to the calendar of this Court for trial. That in March, 1921, I started to prepare this case for trial, nd after a careful examination of the complaint and the answer, came
37 to the conclusion that the bill of complaint failed to state facts sufficient to constitute a cause of action, and therefore, on the 30th day of March, 1921, made a motion to dismiss the complaint under rule 29 of the Equity Rules of this Court.

This motion came on to be heard before the Hon. Thomas I. Chatfield on the 6th day of April, 1921, and was argued at length and briefs were submitted.

That on the 6th day of April, 1921, this case also appeared for trial before Hon. Edwin L. Garvin, and was adjourned pending the determination of the motion.

The matter again appeared on the calendar, I believe, on two occasions, and was adjourned on both these occasions pending the determination by this Court of the motion to dismiss.

That in preparing the memorandum, Mr. Louis R. Bick and myself, spent a number of days in looking up the law with reference to the point involved, and spent another two days in preparing the brief. In this brief a number of interesting and novel points were discussed. It required, in preparing this memorandum, the examination of various text books, and examination of many cases with a view of differentiating the same, and the examination of the several copyright statutes, as well as the opinion of the Attorney General with reference to the copyright statute. After the submis-
38 sion of the briefs, Judge Chatfield rendered a decision dismissing the bill of complaint.

A decree has been prepared, which is now before this Court for signature. The defendants Klein, Morris and Baret are the owners of a theatre, where the alleged infringement took place. Frederick M. Knowles is charged in the complaint with having assisted in the infringement of rewriting several parts of the poems.

When we were retained by the defendants, I immediately got in communication with Saul E. Rogers, Esq., the attorney for the complainant, and advised him that our clients did not intentionally infringe, and that it would be expensive to them to litigate the matter, and that Knowles should not have been made a party. I offered, on behalf of the defendants, to enter into a consent decree, and to the issuance of an injunction, but that no costs or damages should be demanded by him of our clients. Mr. Rogers refused to discontinue this suit against Mr. Knowles, nor to accept the consent decree without the payment of substantial damages. As a matter of fact, he insisted upon every penny of profits that were made.

He told me that he had the house clocked, and knew to the penny, just how much moneys we took in at the box office. Under the circumstances, I told Mr. Rogers that we would have to litigate the matter and question the validity of his copyright.

We believe that this Court should take these facts into consideration on the question of the amount of the counsel fee to be
39 allowed. Our adversary has submitted a memorandum to this Court, stating that the case was decided on a point not raised by us, but was decided upon a decision rendered by the Circuit Court of Appeals. While this is true, we contend, however, that it is immaterial on what point the Court dismissed the bill, since the matter came up on our motion, and if the motion had not been made, the bill would not have been dismissed.

We presented the same argument to Judge Knox in the Southern District, where the same contentions were made by the plaintiff, and Judge Knox said that the complainant should pay a reasonable attorneys' fee in view of that fact that the defendants had offered to

the complainants a consent decree, and that in refusing to accept the consent decree, it compelled the defendants to litigate and make defense. The Judge also stated that Knowles was merely a nominal defendant, and that the complainant's argument, instead of mitigating, aggravated the matter.

We therefore respectfully ask this Court to allow the defendants herein a substantial counsel fee in view of all the facts and particularly in view of the services rendered in bringing success to the defendants.

Judge Knox in the Southern District allowed us a counsel fee of One hundred and fifty ($150) Dollars. We appeared in that action merely for the defendant Knowles. In this action we ap-
40 peared for all of the defendants with the exception of Corse Payton, Corse Payton Stock Company and John Kiser.

FRED FRANCIS WEISS.

Sworn to before me this 13th day of July, 1921.

RHODA MENDEL,
Notary Public, Kings County.

Kings Co. Clerk's No. 250.
Kings Co. Register's No. 2266.
Certificate filed in New York County.
Clerk's No. 704; Register's No. 2532.
Term expires March 30th, 1922.

41 *Final Decree.*

At a Stated Term of the United States District Court Held in and for the Eastern District of New York, at the Post Office Building, in the Borough of Brooklyn, City of New York, on the 18th Day of July, 1921.

Present: Hon. Thomas I. Chatfield, District Judge.

FOX FILM CORPORATION, Complainant,

vs.

FRED M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, Corse Payton, Corse Payton Stock Co., and John Kaiser, Defendants.

The defendants having made a motion to dismiss the plaintiff's bill of complaint, on the ground that it failed to state facts sufficient to constitute a cause of action, and after hearing counsel for the respective parties hereto, and due deliberation having been had, it is

On motion of Bick, Godnick & Freedman, solicitors for the
42 defendant Frederick M. Knowles, and Louis C. Wills, solicitor for the defendants Klein, Morris and Baret,

Ordered, adjudged and decreed, that the complainant, Fox Film Corporation, has no valid right to the poem entitled "Over the Hills to the Poorhouse" and to the poem entitled "Over the Hills from the

Poorhouse," nor has it the exclusive right to dramatize the said poems, or either of them, and it is further

Ordered, adjudged and decreed, that Fox Film Corporation, the complainant herein, has no valid title to any copyright to the poems entitled "Over the Hills to the Poorhouse" and "Over the Hills from the Poorhouse" and it is further

Ordered, adjudged and decreed, that the bill of complaint herein be, and the same hereby is dismissed, with costs, and it is further

Ordered, adjudged and decreed, that the defendants do recover from the complainant, Fox Film Corporation, the sum of $23.40 as costs, to be taxed by the Clerk of this Court, and $100 as and for a reasonable attorneys' fees, making a total sum of $123.40 as costs, and that the defendants have execution against the Fox Film Corporation therefor.

THOMAS I. CHATFIELD,
U. S. D. J.

43 *Petition for Appeal.*

United States District Court, Eastern District of New York.

FOX FILM CORPORATION, Complainant,

against

FRED M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, Corse Payton, Corse Payton Stock Co., and John Kaiser, Defendants.

To the Honorable Thomas I. Chatfield, District Judge:

The above named complainant Fox Film Corporation, feeling aggrieved by the decree made and entered in the above entitled action on the 18th day of July, 1921 dismissing the bill of complaint herein with costs and granting to the defendants' attorneys an allowance of One hundred ($100.00) dollars, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Second Circuit, for the reasons set forth in the assignment of errors filed herewith,

44 and prays that this appeal be allowed; and that citations be issued as provided by law; and that a transcript of the record, proceedings and documents upon which the decree was based duly authenticated be sent to the United States Circuit Court of Appeals for the Second Circuit under the rules in said court in such cases made and provided and your petitioner further prays that the proper order relating to the required security to be required of it be made.

Dated August 15th, 1921.

FOX FILM CORPORATION,
By JACK G. LEO, *Vice-Pres.*
SAUL E. ROGERS, ESQ.,
Solicitor for Complainant.

Office & P. O. Address, 840 Tenth Avenue, Borough of Manhattan, New York City.

45 *Order Allowing Appeal.*

Appeal allowed upon giving bond as required by law for the sum of Five hundred Dollars, the same to act as a supersedeas bond to said execution pending appeal, and also as a bond for costs and damages on appeal.

Dated New York, Sept. 10th, 1921.

EDWIN L. GARVIN,
U. S. D. J.

46 *Assignment of Errors.*

United States District Court, Eastern District of New York.

FOX FILM CORPORATION, Complainant,

against

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, CORSE PAYTON, CORSE PAYTON STOCK CO., and JOHN KAISER, Defendants.

Now comes the complainant in the above entitled action and files the following assignment of errors, which it will require upon its prosecution of the appeal in the above entitled cause from the decree made by this honorable Court on the 18th day of July:

1. That the United States District Court for the Eastern District of New York erred in dismissing the bill of complaint on the ground that it did not allege facts sufficient to constitute a cause of action for infringement of the dramatic copyright of two poems entitled "Over the Hill to the Poor House" and "Over the Hill from the Poor House" written by Will Carleton, and which were published in a collection of other poems entitled "Farm Ballads."

47 2. That the United States District Court for the Eastern District of New York erred in dismissing the bill of complaint on the ground that Norman E. Goodrich, executor and sole legatee of the author Will Carleton, and the complainant's predecessor in title, did not obtain a second valid renewal copyright of the poems "Over the Hill to the Poor House" and "Over the Hill from the Poor House" which renewal copyright purported to extend from the year 1915 to and including the year 1929.

3. That the United States District Court for the Eastern District of New York erred in dismissing the bill of complaint on the ground that Norman E. Goodrich, executor and sole legatee of the author Will Carleton, and the complainant's predecessor in title, did not obtain a second valid renewal copyright of a collection of poems entitled "Farm Ballads" which renewal copyright purported to extend from the year 1915 to and including the year 1929.

4. That the United States District Court for the Eastern District of New York erred in dismissing the bill of complaint on the

ground that after the decease of Will Carleton the author of "Over the Hill to the Poor House" and "Over the Hill from the Poor House" in 1912, he could not give or devise by will to any legatee or distributee whether same were his executor or any other persons, the right to obtain and receive the benefit of a further renewal copyright, although said author and owner of the first renewal
48 copyright left him surviving no widow, children or heirs.

5. That the United States District Court for the Eastern District of New York erred in dismissing the bill of complaint on the ground that after the decease of Will Carleton the author of the collection of poems entitled "Farm Ballads" in 1912, he could not give or devise by will to any legatee or distributee whether same were his executor or any other persons, the right to obtain and receive the benefit of a further renewal copyright although said author and owner of the first renewal copyright left him surviving no widow, children or heirs.

6. That the United States District Court for the Eastern District of New York erred in dismissing the bill of complaint on the ground that although the author Will Carleton of the poems "Over the Hill to the Poor House" and "Over the Hill from the Poor House" and holder of the first renewal copyright which expired in 1915, left him surviving no widow, children or heirs, his executor Norman E. Goodrich, before the expiration of said renewal copyright or at any other time, could not make a valid application for a further renewal of said copyright or in any manner obtain by reason of such application, a valid renewal of said copyright which would inure to the benefit of the legatees or distributees under the will of said author, whether same were the executor or any other persons, unless Will Carleton, the said author and holder of the first renewal copy-
49 right died in 1914, one year before the expiration of the first renewal copyright obtained by him and which first renewal copyright expired in 1915.

7. That the United States District Court for the Eastern District of New York erred in dismissing the bill of complaint on the ground that although the author Will Carleton of the collection of poems entitled "Farm Ballads" and holder of the first renewal copyright which expired in 1915, left him surviving no widow, children or heirs, his executor Norman E. Goodrich, before the expiration of said renewal copyright or at any other time, could not make a valid application for a further renewal of said copyright or in any manner obtain by reason of such application, a valid renewal of said copyright which would inure to the benefit of the legatees or distributees under the will of said author, whether same were the executor or any other persons, unless Will Carleton, the said author and holder of the first renewal copyright died in 1914, one year before the expiration of the first renewal copyright obtained by him and which first renewal copyright expired in 1915.

8. That the United States District Court for the Eastern District of New York erred in dismissing the bill of complaint on the

ground that even if an author dies leaving him surviving no widow
children or heirs, an executor cannot make a valid application for
renewal copyright or obtain by reason of said application
50 valid renewal copyright for the benefit of the legatees or di
tributees unless the author dies within one year from the e
piration of his copyright.

9. That the United States District Court for the Eastern Distri
of New York erred in dismissing the bill of complaint on the grou
that even if the author dies leaving no widow, chilren or heirs, b
leaves a will bequeathing all his property to a sole legatee who
also an executor named under said will, such executor cannot und
the copyright law make a valid application for a further renew
copyright or obtain the benefit of same unless said author dies with
a year preceding the expiration of said first renewal copyright a
in such event the next of kin, if any, would have a prior rig
to the said executor to make a valid application for a further renew
copyright and obtain the benefits therefrom.

Whereas the appellant prays that the said decree be reversed a
that the said District Court for the Eastern District of New York
ordered to enter a decree reversing the decision of the lower Court
said case.

SAUL E. ROGERS,
Attorney for Appellant.

Office & P. O. Address, 840 Tenth Ave., Borough of Manhatt
New York City.

51 *Citation.*

United States District Court, Eastern District of New York.

Fox Film Corporation, Complainant-Appellant,

against

Corse Payton, Corse Payton Stock Company, John Kais
Defendants, and Frederick M. Knowles, Joseph S. Klein, Jose
Morris, and Louis Baret, Appellee'-Defendants.

United States of America, *ss:*

To Frederick M. Knowles, Joseph S. Klein, Joseph Morris, a
Louis Baret, Greeting:

You are hereby cited and admonished to be and appear at a sessi
of the United States Circuit Court of Appeals for the Second Circ
to be held at the United States Court House at Post Office Buildi
Borough of Manhattan, New York City, N. Y. on the 10th day
October, 1921, pursuant to an appeal filed in the Clerk's of
52 of the District Court of the United States for the Eastern D
trict of New York, wherein Fox Film Corporation is co
plainant-appellant and you are appellees, to show cause, if any th

be, why the decree entered against the said appellant as in said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edwin L. Garvin, Judge of the District Court of the United States for the Eastern District of New York, this 10th day of September, in the year of our Lord one thousand nine hundred and twenty-one, and of the independence of the United States, the 146th.

EDWIN L. GARVIN,
United States District Judge.

53 *Bond for Damages and Costs.*

District Court of the United States of America for the Eastern District of New York, in the Second Circuit.

FOX FILM CORPORATION, Plaintiff,

vs.

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS BARET, et al.

Know all men by these presents: That we Fox Film Corporation, as principal, and the United States Fidelity and Guaranty Company, having an office and usual place of business at No. 47 Cedar Street, in the City of New York, County and State of New York, as surety, are held and firmly bound unto the above named Frederick M. Knowles, Joseph Klein, Joseph Morris, Louis Baret, et al., in the sum of Five hundred ($500.00) dollars, to be paid to the said Frederick M. Knowles, Joseph Klein, Joseph Morris, Louis Baret, et al., for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

54 Sealed with our seals and dated the 30th day of August, 1921.

Whereas, the above named Fox Film Corporation has prosecuted its appeal to the United States Circuit Court of Appeals for the Second Circuit, to reverse the decree dated the 18th day of July, 1921, rendered in the above entitled suit in the District Court of the United States for the Eastern District of New York.

Now, therefore, the condition of this obligation is such, that if the above named Fox Film Corporation shall prosecute its appeal to effect and answer all damages and costs if it fail to make its appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

FOX FILM CORPORATION. [L. S.]
P. J. JACK G. LEO. [SEAL.]
UNITED STATES FIDELITY AND GUARANTY COMPANY,
By S. FRANK HEDGES, *Attorney-in-fact.*

Attest:
WILLIAM H. ESTWICK,
Attorney-in-fact.

55 STATE OF NEW YORK,
County of New York, ss:

On this 30th day of August, 1921 before me personally came S. Frank Hedges known to me to be the Attorney-in-fact of the United States Fidelty and Guaranty Company, the corporation described in and which executed the annexed bond of Fox Film Corporation as surety thereon, who being by me duly sworn, deposes and says, that he resides in the City of New York, State of New York, and that he is the Attorney-in-fact of the said United States Fidelity and Guaranty Company; and knows the corporate seal thereof; that said company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Fox Film Corporation is the corporate seal of the said United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like order and authority as Attorney-in-fact of said Company; and that he is acquainted with William H. Estwick and knows him to be the Attorney-in-fact of said Company; and that the signature of said William H. Estwick subscribed to said bond is in the genuine handwriting of said William H. Estwick and was thereto subscribed by order and
56 authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unincumbered and liable to execution, exceed its claims, debts and liabilities of every nature whatsoever, by more than the sum of two million dollars ($2,000,000.00).

S. FRANK HEDGES.

Sworn to, acknowledged before me, and subscribed in my presence this 30th day of August, 1921.

C. B. BRADBURY,
Notary Public, Westchester County.

Certificates filed in the following counties, New York, Clerk's No 701.

57 STATE, CITY AND COUNTY OF NEW YORK, *ss:*

On this 31st day of August, 1921, before me came Jack G. Leo, to me known, who being by me duly sworn, did depose and say that he resides in the Borough of Bronx, City of New York; that he is the vice-president of the Fox Film Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such

corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

GEORGE BLECH,
Commissioner of Deeds, City of New York.

N. Y. Co., Clerk No. 21140.
Kings County 1108.

58 *Stipulation.*

United States District Court, Eastern District of New York.

FOX FILM CORPORATION, Complainant-Appellant,

against

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, and Louis Baret, Defendants-Appellees, and Corse Payton, Corse Payton Stock Co., and John Kaiser, Defendants.

It is hereby stipulated and agreed that the foregoing is a true copy of the transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated, New York, October 31, 1921.

SAUL E. ROGERS,
Attorney for Complainant-Appellant.
BICK, GODNICK & FREEDMAN,
Attorneys for Defendant Knowles.
LOUIS C. WILLS,
Attorney for Defendants Klein, Morris & Baret.

59 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

FOX FILM CORPORATION, Complainant-Appellant,

vs.

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS Baret, Corse Payton, Corse Payton Stock Company, and Joseph Kaiser, Defendants-Appellees.

I, Percy G. B. Gilkes, Clerk of the District Court of the United States of America for the Eastern District of New York, do hereby Certify that the foregoing is a correct copy of the transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of Brooklyn, in the Eastern District

of New York, this 31st day of October, in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the said United States the one hundred and forty-sixth.

[SEAL.] PERCY G. B. GILKES,
Clerk.

60 *Decision C. C. A.*

United States Circuit Court of Appeals for the Second Circuit.

FOX FILM CORPORATION, Complainant-Appellant,

vs.

FREDERICK M. KNOWLES, "WILLIAM" O. MCWATTERS (the First Name "William" Being Fictitious, the Real Name of This Defendant Being Unknown to Plaintiff), Harry Myers and Joseph S. Klein, Defendants-Appellees.

FOX FILM CORPORATION, Complainant-Appellant,

vs.

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH MORRIS, LOUIS Baret, Corse Payton, Corse Payton Stock Company, and John Kaiser, Defendants-Appellees.

Before Hough, Manton, Mayer, JJ.

Saul E. Rogers, for Appellant.
Fred F. Weiss, for Appellee-.

Per Curiam:

Decrees affirmed on authority of Silverman vs. Sunrise, etc. Co., 273 Fed., 909.

61 *Order for Mandate.*

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit held at the court-rooms, in the Post Office building, in the City of New York, on the 2nd day of February, one thousand nine hundred and twenty-two.

Present:

Hon. Charles M. Hough,
Hon. Martin T. Manton,
Hon. Julius M. Mayer,
Circuit Judges.

FOX FILM CORPORATION, Complainant-Appellant,

v.

FREDERICK M. KNOWLES et al., Defendants-Appellees.

Appeal from the District Court of the United States for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York, and was argued by counsel.

62 On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

C. M. H.
M. T. M.

(Endorsed:) United States Circuit Court of Appeals, Second Circuit. Fox Film Corpn. v. F. M. Knowles, et al. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 2, 1922. William Parkin, Clerk.

63 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 62 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Fox Film Corporation, Complainant-Appellant, against Frederick M. Knowles, et al., Defendants-Appellees, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 16th day of February in the year of our Lord One Thousand Nine Hundred and Twenty-two and of the Independence of the said United States the One Hundred and Forty-sixth.

[Seal of United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk.

64 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Fox Film Corporation is appellant, and Frederick M. Knowles, Joseph Klein, Joseph Morris, Louis Baret, Corse Payton, Corse Payton Stock Company, and John Kaiser, are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Eastern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed
65 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

65½ [Endorsed:] File No. 28,780. Supreme Court of the United States, October Term, 1921. No. 825. Fox Film Corporation vs. Frederick M. Knowles et al. Writ of Certiorari. United States Circuit Court of Appeals, Second Circuit. Filed May 5, 1922. William Parkin, Clerk.

66 In the Supreme Court of the United States, October Term, 1921.

FOX FILM CORPORATION, Petitioner,

v.

FREDERICK M. KNOWLES, JOSEPH KLEIN, JOSEPH NORRIS, LOUIS Baret, Corse Payton, Corse Payton Stock Company, and John Kaiser, Respondents.

Stipulation as to Return to Writ of Certiorari.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of

Appeals for the Second Circuit to the writ of certiorari granted therein.

SAUL E. ROGERS,
Counsel for Petitioner.
LOUIS R. BICK,
Counsel for Respondents.

67 & 68 To the Honorable the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York May 6th, 1922.

[Seal of United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

69 & 70 [Endorsed:] 825—28780. United States Circuit Court of Appeals, Second Circuit. Fox Film Corporation v. F. M. Knowles et al. Return to Certiorari. 1.70.

71 [Endorsed:] File No. 28,780. Supreme Court U. S., October Term, 1921. Term No. 825. Fox Film Corporation, Petitioner, vs. Frederick M. Knowles et al. Writ of certiorari and return. Filed May 11, 1922.